National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: October 23, 1998

TO: Ralph R. Tremain, Regional Director, Region 14

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Solutia Inc., Case 14-CA-25083

530-6050-0825-3300, 530-6050-4500, 775-8731, 775-8770

This Section 8(a)(5) case was submitted for advice as to whether: (1) the Employer was obligated to bargain with the Union concerning its decision to shut down its power plant and enter into an agreement with a third party to build, own and operate a new power plant, which caused the layoff of bargaining unit employees; and (2) if there was a bargaining obligation, the Union waived its right to bargain over the issue.

FACTS

Since the 1930's, Monsanto Company ("Monsanto") and the Union [(1)] have been parties to a series of collective-bargaining agreements covering the employees at the W.G. Krummrich Plant located in Sauget, Illinois. The most recent agreement was effective from September 1995 through November 12, 1998. The plant "powerhouse" was initially installed in the early 1920's, and provides utilities including steam, electric power, boiler feed water, filtered water, compressed air, and the incineration of two waste by-products. The plant sold these utilities to other companies as well as providing it to Monsanto.

In 1995 Ethyl Corporation announced that it intended to stop buying steam from the plant. Ethyl had purchased about 25% of the steam produced in the utilities department of the plant. Shortly thereafter, Monsanto undertook a study to address the problems with providing utilities to the power plant. In October 1996, the study, entitled "Preliminary Utility Restructuring Roadmap", was submitted to management. A "Site Leadership Team", consisting of the plant manager and the Union bargaining committee, also received the study. The alternatives set forth in the study included spending $21 million over four years to build a new utilities department. In December 1996, management rejected that alternative on the basis that the project would not provide a sufficient return on the investment. [(2)] The Union was told that the lack of capital was a concern for replacing the powerhouse.

On February 20, 1997, [(3)] Monsanto told the Union that the current power plant was going to be shut down and Monsanto was considering a third-party steam arrangement. In March, Monsanto asked eight entities to submit bids to provide steam to the plant. Monsanto specified that the bids must include a certain reliability factor and guarantee the production of a certain amount of product, but did not specify that the third party must operate the facility. On March 18, Monsanto advised the Union that it had sought bids from third parties to supply steam, and that the projected costs included having the third party operate the facility. Monsanto also told the Union that the Company was putting aside money for severance pay for about twenty-seven employees.

On September 1, Monsanto spun off its chemical businesses into a separate company, Solutia ("Employer or "Company"). As part of the spin-off, Solutia acquired the Krummrich plant and approximately $1 billion of debt. At the Krummrich Plant, Solutia currently employs approximately 310 employees, 25 of whom work in the powerhouse. After Solutia took over the facility, it recognized the Union and assumed the current collective-bargaining agreement. The parties have reached a new tentative agreement that is expected to become effective on November 13, 1998.

The parties agree that the powerhouse is outdated and needs to be replaced. On September 4, the Union was told that the utilities restructuring would affect twenty-five employees who would not have jobs. The Union's only response was that it opposed having outside people work in the plant.

On September 18, Solutia told the Union that it had limited its search for a third-party supplier to two entities, and that Solutia was considering whether the facility should be built inside or outside Solutia's plant. The Union told the Company that if the facility was to be built inside the plant, it should be operated by bargaining unit members.

On October 9, the Company told the Union that the plan for utilities restructuring had been approved but cash was a key concern. On November 18, the Employer provided the Union with projections, which showed that there would be no employees in utilities in 1999 as a result of third party ownership of the facility. The Union objected to a third party operating the proposed facility and stated its intention to object to such an arrangement.

On December 12, Solutia signed a letter of intent to negotiate an agreement with Gateway Energy Systems ("Gateway"). This letter of intent set out in detail the anticipated terms of the final agreement. At a meeting on March 27, 1998, Solutia advised the Union that it had selected Gateway and they were working toward a final contract. Solutia provided the Union with information about the agreement and gave the Union a document entitled "Utilities Restructuring Project Summary." During this meeting, the Union submitted an information request to which Solutia promptly responded. On April 17, 1998, Solutia responded to more information requests by the Union. On April 22, 1998, during a meeting concerning the powerhouse restructuring, the Union made a demand to bargain over Solutia's decision to enter into the agreement with Gateway. Solutia has refused to bargain over the decision, but stated it would bargain over the effects of the decision.

On June 8, 1998, Solutia and Gateway[(4)] entered into a service agreement and a lease agreement which contain the following provisions:

1. Gateway will build and operate a power plant within the area where the plant is currently operating, and will lease the land from Solutia for 20 years for $10.00.

2. The agreements are effective for twenty years and provide for Solutia to buy steam, compressed air and treated water from Gateway.

3. The project will be funded by a bond issuance signed by Gateway.

4. The price at which Solutia will buy the products is based on: (1) monthly repayment of principal and interest; (2) a variable cost for raw materials; and (3) fixed costs for operation.

5. Gateway's labor costs are part of the fixed operational cost. If Gateway has higher labor costs it will earn less, if those costs are lower it will earn more. Over the life of the agreement fixed costs are pegged to economic indexes and increase with those indexes.

6. Regardless of the amount of product Solutia buys from Gateway, even if it buys none, Solutia has guaranteed to repay 100 percent of Gateway's capital investment. If the bond interest rate goes down, Solutia can request the bonds be refinanced. This reduced financing rate would be passed on directly to Solutia.

7. Gateway has given Solutia guarantees regarding units of raw materials, which it will use to produce the product. For example, Gateway has guaranteed it will only use a fixed number of units of electricity to produce 1000 pounds of steam. If Gateway uses less it earns more money; if it uses more it earns less money.

8. At five-year intervals, Solutia can purchase the power plant for a fixed price.

9. Gateway has the right to sell excess capacity from the facility to other entities. If Gateway sells to other entities, Solutia will receive fifty percent of the profit.

10. Solutia has the right to build and operate new facilities on its property to produce steam, compressed air and treated water.

However, Solutia would have to pay Gateway a penalty if Solutia did not continue to buy a minimum amount of product from Gateway.

11. Solutia will provide Gateway all water, electricity, and waste disposal necessary for Gateway to operate the facility. Solutia has the right to provide Gateway all its natural gas.

12. The price of the raw materials is passed directly to Solutia without a mark-up.

13. If environmental law changes cause an increase in Gateway's capital or operational expenses, Gateway would pay a percentage of the increase up to $50,000 and Solutia would pay for all other costs.

14. If taxes are assessed on assets purchased by Gateway, those costs will be added to the total capital costs for the project and Solutia will repay these costs. Gateway will pay all property taxes for the land it leases, as well as taxes on raw materials, and then pass those costs directly to Solutia.

Solutia contends it was not obligated to bargain over the decision to have a third party build and operate the power plant. It argues that its main focus is going to be the production of chemicals and that it has made a business decision to get out of the business of providing steam, etc. Furthermore, Solutia contends that the decision to enter into this agreement was not driven by labor costs. When Solutia was spun off from Monsanto it assumed a $1 billion debt. In 1996, when upper management was approached to approve funding for a new power plant, management declined and stated that the company would have to come up with another way to restructure the utility plant. Solutia contends it made the decision to have a third party build and operate a new plant because if Solutia did so itself, there would not be a sufficient return on the capital investment on the utility plant. In other words, Solutia did not want to have to show a new plant on its financial statements as a long-term liability of an asset, which required a return on investment. Solutia alleges it turned to a third party to build and operate the facility because of its $1 billion debt and the need to show a high return on capital investment.

Solutia also contends that it kept the Union fully advised of its plans with regard to the powerhouse. The Union has been aware since March 1997 that Solutia was looking at a third-party steam arrangement. Accordingly, Solutia contends the Union waived its right to bargain by waiting until Solutia had entered into its arrangement with Gateway to request bargaining about the decision to shutdown the powerhouse and eliminate those jobs.

The Union did not file a grievance over Solutia's refusal to bargain about the decision to enter into this agreement. At this time Solutia is not willing to waive the time limits for the Union to file a grievance.

The Union asserts that the matter is a bargainable issue and that it requested bargaining as soon as it had sufficient facts upon which to base this conclusion.

ACTION

We conclude for the reasons discussed below that the Region should dismiss the complaint, absent withdrawal.

I.Solutia had no obligation to bargain about its decision to have a third party build and operate a new powerhouse.

A. Dubuque Rationale

In Fibreboard Paper Products v. NLRB,[(5)] the Court held that an employer's subcontracting of its maintenance work in such a way that it merely replaced existing employees with those of an independent contractor who did the same work under similar conditions of employment constituted a mandatory subject of bargaining. The Court stated that the decision had not altered the company's basic operation, and, since it turned on labor costs, was "peculiarly suitable for resolution within the collective bargaining framework..."[(6)]

In First National Maintenance,[(7)] the Supreme Court held that an employer's decision to close down part of its business was not a mandatory subject of bargaining, because it was a decision "akin to the decision whether to be in business at all" and, in that situation, the "harm likely to be done to an employer's need to operate freely in deciding whether to shut down part of its business purely for economic reasons outweighs the incremental benefit that might be gained through the union's participation in making the decision..."[(8)] The court left Fibreboard intact, and stated that each case involving economic decisions that impact employees, "such as plant relocations, sales, other kinds of subcontracting, automation, etc." must be considered on its particular facts to determine whether "the benefit, for labor-management relations and the collective bargaining process, outweighs the burden placed on the conduct of the business."[(9)]

More recently, in its Dubuque Packing[(10)] decision, the Board enunciated the following test for determining whether a work relocation decision is a mandatory subject of bargaining. In order to make a prima facie showing that a relocation is a mandatory subject of bargaining the General Counsel has the initial burden of showing that: (1) unit work relocation involved "the replacement of one group of employees for another;" and (2) the work relocation was "unaccompanied by a basic change in the nature of the employer's operation." The Employer then has the burden of coming forward with evidence to rebut the prima facie case or the burden of proving certain defenses, discussed below.

To rebut the prima facie showing, the employer might show, for example, that the work at the new location is not the same as the work formerly done at the old location because the work at the new location "varies significantly from the work performed at the former plant" or that the work removed from the old location has been discontinued completely. 303 NLRB at 391. Alternatively, the employer might establish that the relocation decision in fact "involves a change in the scope or direction of the enterprise."[(11)]

Failing that, the employer can still raise two defenses to establish that it had no bargaining obligation by showing that "(1) labor costs (direct and/or indirect) were not a factor in the decision or (2) that even if labor costs were a factor in the decision, the union could not have offered labor cost concessions that could have changed the employer's decision to relocate." Id. at 391. The first defense raises the issue of the employer's actual motivation for the relocation decision, i.e., "plac[es] on the employer the burden of adducing evidence as to its motivation for the relocation decision because it alone, more often than not, is the party in possession of the relevant information" regarding the motivation underlying its decision.[(12)]

If labor costs had been a factor in deciding to relocate the work, the second defense allows the employer to prove that, at the time it made its decision, the union could not have offered sufficient concessions to have "changed the employer's decision..." The Board set forth a hypothetical example of this defense noting that the employer could meet its burden by demonstrating that "the costs for modernization of equipment or environmental controls were greater than any labor cost concessions the union could offer."[(13)] In this particular example, the Board used a simple mathematical comparison noting that, if projected savings amounted to $10.5 million and labor costs were only $10 million, the union could not have offered sufficient concessions.

Notwithstanding this mathematical example, it is important to note that the Board made clear that "an employer would have a bargaining obligation if the union could and would offer concessions that approximate, meet, or exceed the anticipated costs or benefits that prompted the relocation decision, since the decision then would be amenable to resolution through the bargaining process." Id. at 391. In other words, the Board announced this test to examine whether or not the parties could enter into meaningful bargaining over the decision to relocate. Where the union could "change the decision," the decision was amenable for bargaining and a bargaining obligation attached.

Although Dubuque Packing specifically concerned work relocation decisions, we have applied its principles to other "Category III" decisions -- decisions that have a direct impact on employment but have as their focus the economic profitability of the employing enterprise[(14)] -- that fall within the spectrum between Fibreboard and First National Maintenance.[(15)]

B. The Instant Case

Here, the Employer has not simply subcontracted its powerhouse steam delivery work, but has: 1) lost a customer which formerly purchased 25% of the steam produced by the powerhouse; 2) decided to shut down the current powerhouse because it was outdated; and 3) contracted with a third party to build and operate a new powerhouse which will result in the elimination of 25 bargaining unit jobs.[(16)] We initially conclude that the subject the Union sought to bargain about was Solutia's decision to have a third party build and operate the new plant.

The Employer, first Monsanto and then Solutia, kept the Union fully apprised of the decision making process regarding replacement of the outdated power plant. The Union made various responses, initially in the form of objections. In September 1997 the Union stated its opposition to outsiders operating the new plant which the Union stated should be run by current unit employees. In November 1997, the Union again objected to third party operation of the new plant. Finally, on April 22, 1998, the Union requested bargaining over third party operation, and also over keeping plant jobs for unit employees. The Employer interpreted the Union's statements on April 22 as requesting bargaining over third party operation. The Union-filed charge in this case specifically attacks the Employer's "decision to close the powerhouse.... and finance the reconstruction and operation of that department by a third party." In these circumstances, we conclude that by April 22, 1998 the Union sought bargaining over third party operation and the retention of unit employees.

We conclude that the decision to have a third party build and operate the new powerhouse should be analyzed under Dubuque. It seems clear that this Employer decision is not within the parameters of Fibreboard. On the other hand, the Employer has not completely gone out of the business of acquiring and distributing certain materials necessary to the production process of its business. Thus, where it has advantageous contracts for materials necessary to that production, Solutia kept those contracts and will supply Gateway with the materials as a set off of its costs for steam. This Employer decision is not the kind of "partial closing" - or going out of part of a business - that was at issue in First National Maintenance or Adams Dairy.[(17)] Moreover, this is the type of decision to which we have applied Dubuque.[(18)]

Applying the Dubuque test, we initially conclude that third party operation did not significantly change the nature or direction of the business. Solutia remained in the chemical business and still required the same materials that had been supplied from the in-house powerhouse. The decision essentially boiled down to who will supply the steam, an integral part of its production, in the future. The choice of an outside supplier did not significantly change the direction of the business, although it caused the elimination of twenty-five bargaining unit jobs.

While the General Counsel thus can arguably establish a prima facie case under Dubuque, we conclude that the Employer can likely establish that labor costs were not "a factor" in the decision to have a third party build and operate the power plant. All parties agreed that the powerhouse needed to be replaced. The issue for the Employer was not the amount of the $21 million expenditure needed for a new plant. Rather, the Employer's concern was to avoid incurring any substantial cost as its own capital expense which would have yielded too low a return on the investment. This factor - how to show this expense on the company's balance sheet in light of its existing large debt - arguably did not implicate labor costs.

We also conclude that, even assuming that labor costs were a factor, the Employer may well be able to establish the second affirmative defense, i.e. that the Union could not have offered concessions sufficient to change the Employer's decision. Thus, there is no evidence that the Union could have either: 1) offered any concession that would have sufficiently reduced the cost of building a new powerhouse to the point of providing the Employer with a sufficiently high return on that investment; or 2) structured such a capital expenditure so as not to show up on the Company's balance sheet as a liability. In sum, it appears that the Employer's decision ignored labor costs, turning solely upon a consideration of how to financially structure this cost as a non-capital expense, and, in any event, the Union could not have offered concessions sufficient to change this decision.

II. In any event, the Union waived any right it may have had to bargain over Solutia's decision to close down the powerhouse and have a third party build, own, and operate a new one.

It is well settled that an employer's obligation to bargain over changes in mandatory bargaining subjects, is not triggered until the union requests bargaining.[(19)] It is "incumbent upon the union to act with due diligence in requesting bargaining."[(20)]

The Board has long recognized that where a union receives timely notice that the employer intends to change a condition of employment, it waives the right to bargain unless it promptly requests that the employer bargain over the matter.[(21)] To be timely, the employer's notice must be given sufficiently in advance of the proposed change to allow a reasonable opportunity to bargain.[(22)] If the notice is not sufficiently in advance of the proposed change, or the employer has made its decision and has no intention of changing its mind, then the notice is nothing more than a presentation of a fait accompli.(23) It is well established that a union cannot be held to have waived bargaining, by failing to request it, where a change is presented as a fait accompli.(24) Finally, a union must request bargaining to invoke an employer's obligation to bargain; a mere protest or objection does not constitute and effective request to bargain.(25)

In Hartmann Luggage Company,(26) the Board affirmed the Administrative Law Judge's decision that held that when a union had actual notice of a proposed layoff only four and a half days before the layoff took effect, but failed to request bargaining until after the layoff, the union "failed to exercise diligently its right to demand discussion or bargaining, and it cannot now claim a failure to bargain on the part of the Respondent."(27) In that case, the employer had not given formal notification directly to the union. Nevertheless, the ALJ found that "in a matter so crucial as layoffs such time was adequate to alert and afford the Union an opportunity to protest and/or request consultation in the matter."(28)

Regarding the third party operation decision, the Employer notified the Union in March 1997 that the Employer was soliciting bids from third parties. On September 18, the Union was told that the Employer had narrowed its third party search to two entities. The Union's response was to object; it did not effectively request bargaining. On December 12, the Union was told that the Employer had signed a letter of intent to negotiate a third party contract with Gateway. On March 27, 1998, the Union was told that the Employer was working toward a final agreement with Gateway. Certainly by December 1997, the Union knew or should have known that the Employer had already decided to have a third party build, own, and operate the new plant.

Therefore, we conclude that the Union had sufficient and timely notice of Solutia's decision to close down the power plant and have a third party build, own, and operate a new one that it should have requested bargaining over the decision prior to April 22, 1998. The Union was not presented with a fait accompli. The mere fact that the Union did not have all the details of the agreement between the Company and the third party, is insufficient for the Union not to have earlier requested bargaining over that decision.

Therefore, even assuming arguendo that the Union had any right to bargain about the decision to have a third party build, own, and operate a new powerhouse, we conclude that the Union waived its right by its failure to timely request bargaining before that decision had finally been made.

III. Solutia's failure to bargain with the Union pursuant to the Union's April 22, 1998 request to bargain did not violate Section 8(a)(5).

We conclude that the loss of bargaining unit jobs was inextricably intertwined with Solutia's decision to close the powerhouse and have a third party build a new one. Therefore, Solutia had no obligation to bargain with the Union concerning the loss of these jobs on or after April 22, 1998. On that date, the Union incorrectly stated that the Company had an obligation to discuss the decision to dismantle the powerhouse. The Union also argued that the Company "should be doing the work [in the new powerhouse] with Local #12 people, not laying Local #12 people off because of a new powerhouse."(29) To the extent that the Union was requesting bargaining over maintaining former powerhouse employees in the new powerhouse, operating under the terms and conditions of the extant collective bargaining agreement, the Union waived such bargaining by failing to make a timely request.

The Union had been informed since March 18, 1997 that the third party bids to supply steam included having the third party operate the powerhouse. By December 12, when Solutia signed a letter of intent to negotiate an agreement with Gateway, the decision had been made to have the third party operate the new powerhouse with its employees rather than employees currently working in the powerhouse and represented by the Union. Thus, the March 27 and April 22, 1998 meetings were only to keep the Union updated on the project. We note that the Employer at this late date was working toward final agreement with Gateway, and final agreement in fact was reached some six weeks later. Thus, any arguable demand for bargaining over retention of the current powerhouse employees presents the issue of when a request to bargain about a proposed action, if made after the matter has been decided, but before the action has finally occurred, is nevertheless untimely.

We found no Board case that imposed a specific time limit on an effective bargaining request prior to a decision's implementation. Rather, the cases holding that a union had waived its right to bargain all involved situations where the union did not make a bargaining demand until after the proposed action had been actually implemented.(30) However, that was precisely the situation in this case; the decision to have a third party operate the powerhouse with its own employees was effectively implemented in the December agreement executed by Solutia and Gateway, not by their execution of the final agreement in June 1998. We conclude that the Union's April 22 bargaining demand was untimely even though it was made six weeks prior to the Company signing the final agreement with Gateway on June 8, 1998.

The Union had notice as early as March 18, 1997 that the powerhouse would be shut down, resulting in the elimination of at least 15 bargaining unit jobs. By September the Union was on notice that all 25 bargaining unit employees then working in the powerhouse would not have jobs there after the utilities restructuring. Despite having this notice, the Union waited until April 22, 1998 to request bargaining about the remaining 10 jobs. The important factor in this case is the 13 months which had already elapsed, and not the last six weeks before a final agreement was signed. This was an untimely bargaining demand because there could be no meaningful bargaining at that time concerning Union employees operating the new powerhouse. As discussed above, in December Solutia and Gateway had already finished negotiating the terms of the agreement whereby Gateway was to build, own, and operate the new powerhouse. That aspect of the agreement was not going to change at this late date; only "minor" items needed to be resolved. Accordingly, the Region should dismiss the charge, absent withdrawal.

B.J.K.

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[1] The International Chemical Workers Union, Local 12.

[2] In other words, Monsanto did not want to list the construction expense on its balance sheet as either a long-term liability or an asset, because such listings would result in a concomitant return on investment which would have been unacceptably low.

[3] All dates hereafter are in 1997 unless noted otherwise.

[4] The Region's investigation did not establish any financial interrelationship or overlap between key personnel of Solutia and either Gateway Energy Systems L.L.C. or Gateway Energy WGK Project, L.L.C.

[5] 379 U.S. 203 (1964).

[6] Id. at 214.

[7] 452 U.S. 666 (1981).

[8] Id. at 677, 686.

[9] Id. at 679, 686, n. 22.

[10] 303 NLRB 386, 391 (1991), enfd. in relevant part 1 F.3d 24 (D.C. Cir. 1993). See "Guideline Memorandum Concerning Dubuque Packing Co.," Memorandum GC 91-9, issued August 9, 199 at 4 ("GC Guideline").

[11] Id. See cases cited in GC Guideline at 5-6, n.11.

[12] 303 NLRB at 392. See GC Guideline at 6-7. In support of this defense, the employer can rely only on the considerations that it actually had taken into account at the time that it decided to relocate the unit work. Id., and n. 14.

[13] Id. at 391, 392 n.13; GC Guideline at 7.

[14] See First National Maintenance, 452 U.S. at 677.

[15] See, e.g., The Topps Co., Case 4-CA-25444, Advice Memorandum dated April 28, 1997 (decision to close a plant and subcontract the plant's production work was mandatory subject of bargaining).

[16] **The new powerhouse will only have 10 positions rather than 25 regardless of who staffs those positions. Thus, 15 positions in the powerhouse would be lost in any event.**

[17] **350 F.2d 108, 111 (8th Cir. 1965), denying enf. of 137 NLRB 815 (1962) (employer's decision to terminate the distribution part of its dairy business, and sell its milk to independent distributors who would deliver to the retailers, was not a mandatory subject of bargaining because the employer had "liquidated . . . part of its business" and thus brought about a "basic operational change").**

[18] **See, e.g. The Topps Company, supra; Rotorex Co., Inc. and Fedders Corp., Case 5-CA-27338, Advice Memorandum dated April 9, 1998.**

[19] **See e.g. U.S. Lingerie Corp., 170 NLRB 750, 752 (1968); Medicenter, Mid-South Hospital, 221 NLRB 670, 678-679 (1975).**

[20] **Kansas Education Assn., 275 NLRB 638, 639 (1985), citing Meharry Medical College, 236 NLRB 1396 (1978).**

[21] **Intersystems Design Corp., 278 NLRB 759, 759 (1986), quoting Ciba-Geigy Pharmaceuticals Division, 264 NLRB 1013, 1017 (1982) enf'd. 722 F.2d 1120 (3d Cir. 1983).**

[22] **Id.**

[23] **Id.**

[24] **Intersystems Design Corp., 278 NLRB at 759, quoting Gulf States Mfg. v. NLRB, 704 F.2d 1390, 1397 (5th Cir. 1983).**

[25] **American Buslines, Inc., 164 NLRB 1055 (1967); Globe-Union, Inc., 222 NLRB 1081 (1976); Clarkwood Corporation, 233 NLRB 1172 (1977); Citizens National Bank of Wilmar, 245 NLRB 389 (1979).**

[26] **173 NLRB 1254 (1968).**

[27] **173 NLRB at 1256.**

[28] **173 NLRB 1255-1256.**

[29] **See notes of April 22, 1998 "Powerhouse Informational Meeting", p. 5; See also notes of April 22, 1998 "Utilities Restructuring Meeting", p. 4.**

[30] **See Motoresearch Company and Kems Corporation, 138 NLRB 1490, 1493 (1962); American Buslines, Inc., supra at 1056; Murphy Diesel Company, 179 NLRB 149 (1969); Globe-Union, Inc., supra at 1082; Clarkwood Corporation, supra; City Hospital of East Liverpool, 234 NLRB 58, 59 (1978); Citizens National Bank of Willmar, supra at 389-390; Ventura County Star-Free Press, 279 NLRB 412 (1986); Emhart Industries, 297 NLRB 215, 216 (1989); Haddon Craftsmen, 300 NLRB 789 (1990).**